IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.161 OF 2005
IN
WRIT PETITION NO.5788 OF 1997

Apollo Paper Mills Ltd.,
a company incorporated under
the Companies Act, 1956 having
its Registered Office at 113,
Mittal Chambers, Nariman Point,
Mumbai - 400 021. .. Petitioner.

V/s.

1. Union of India & Others,
(through the Joint
Secretary,Ministry of Law,
Justice & Company Affairs,
Aayakar Bhavan, M.K.Road,
Churchgate, Mumbai-400 020.
2. Commissioner of Customs,
Jawahar Customs House
JNPT, Nhava Sheva,
Dist. Raigad, Tal. Uran.
3. Asstt. Commissioner of Customs
(Docks), Mumbai having his
office at Customs House,
Ballard Estate,
Mumbai - 400 038.
4. The Asstt. Commissioner of
Customs, Project Registration
Estate, Mumbai - 400 038.
5. Central Warehousing Corporation,
a wholly owned Corporation of
Government of India, having
its office at Warehousing
at warehousing Bhavan,
4/1, Siri Institutional Area,
Hauz Khas, New Delhi 110 016
and represented through
the Manager (CFS),
Dronagiri, Mumbai Node JNPT
Area, C.W.C., New Bombay.
6. The Manager (CFS), Dronagiri,
Node JNPT Area,
Central Warehousing
Corporation,New Bombay. .. Respondents.

Mr.K.R. Dhanuka with Mr.Bhupendra Singh and Mr.S.P. Dhanuka for the petitioner.
Mr.A.J.Rana, senior counsel with Mrs.S.V.Bharucha for

the respondent Nos.1 to 4.
Mrs.S.I.Shah for respondent Nos.5 & 6.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 20TH DECEMBER, 2005.

ORAL JUDGMENT : (PER J.P. DEVADHAR, J.)

1. Heard counsel on both sides.

2. Rule. Rule made returnable forthwith. By consent of the parties, the review petition is taken up for final hearing.

3. By this petition, the petitioner seeks review of the judgment and order dated 28th October, 2005 passed in Writ Petition No.5788 of 1997 mainly on two grounds. Firstly, it is contended that there are factual errors in the said judgment which needs to be rectified. Secondly, it is contended that the decision of the Apex Court in the case of Assam Sillimanite Limited V/s. Union of India reported in 1990 (3) Supreme Court Cases 182 which was cited during the course of argument by the counsel for the petitioner has not been considered in the impugned judgment and order dated 28th October, 2005. It is the contention of the petitioner that due to the delay in assessment of duty and the consequences thereof, the entire project of the petitioner has been shelved. It is submitted that having found that

the action of the Central Warehousing Corporation in rejecting the waiver application was in breach of the principles of natural justice, this Court, instead of remanding the matter in the light of the decision of the Apex Court in the case of Assam Sillimanite (supra) ought to have referred the matter to arbitration by appointing an arbitrator to determine the quantum of loss / profit / damages / compensation to the petitioner for the lapses on the part of the respondents.

4. As regards the first contention is concerned, although the errors pointed out are inconsequential, we deem it proper to rectify the typographical errors in the judgment. Accordingly, we order that the impugned order dated 28th October, 2005 be modified as follows:

a) In para 5 of the judgment, the value of the consignment shown at "Rs.1.07 crores" be substituted as "Rs.1.67 crores excluding freight and duty".

b) In para 29(a) of the judgment, date of filing of the bill of entry mentioned as "May 25, 1996" be substituted as "March 25, 1996".

c) In para 29(a) of the judgment, the date of assessment of goods mentioned as "June 9, 1997" be substituted as ‘June 18, 1997’.

5. As regards the second contention is concerned, the decision of the Apex Court in the case of Assam Sillimanite Limited (Supra) relied upon by the counsel for the petitioner has not been referred to in the impugned judgment because the said judgment of the Apex Court is not applicable to the facts of the case in hand. In the case of Assam Sillimanite (supra), the issue raised was, whether the Government was justified in terminating the mining lease granted to the petitioner therein and granting fresh leases over the same area in favour of a Government Company. It was the contention of the petitioner therein that the termination of the lease without notice was in breach of principles of natural justice. The above contention was upheld by the Court. However, the petitioner therein prayed that in view of the lapse of time, in stead of putting back in possession of the leased premises, the petitioner be awarded compensation for the wrongful premature termination of the leases by referring the matter to the court appointed arbitrator to determine the compensation. In that context, the Apex Court referred the matter

to the arbitration by appointing an arbitrator for determining the damages. In the present case, we have held that the petitioner who is guilty of contravening the provisions of the Customs Act and the petitioner who has approached this Court belatedly, has not made out a case for shifting the warehousing charges upon the Central Government. As regards the order passed by the Central Warehousing Corporation, we have accepted the contention of the petitioner that the rejection of the waiver application of the petitioner without assigning any reason was in breach of principles of natural justice and accordingly we have remanded the matter for denovo consideration. Neither in the pleadings there is any prayer for referring the matter to arbitration for quantification of loss/damages nor this Court has power to grant such relief under Article 226 of the Constitution of India. Hence, the oral request made by the learned counsel for the petitioner could not be entertained. Accordingly, we hold that the second argument advanced by the Counsel for the petitioner is without any merit and the same is rejected.

6. The review petition is disposed of accordingly with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)